



August 1, 2001

Mr. Gary W. Smith
City Clerk
City of Baytown
P.O. Box 424
Baytown, Texas 77522-0424

OR2001-3349

Dear Mr. Smith:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 150159.

The City of Baytown (the "city") received a request for a copy of various personnel records concerning a specified city police officer. You state that you have no information responsive to the request for all transfer requests for the specified officer.¹ You have submitted for our review a copy of the officer's "Departmental Personnel File" and "Human Resources Personnel File." You claim that the submitted information is excepted from disclosure under sections 552.101, 552.114, 552.115, 552.117, and 552.130 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information.

You claim that the submitted Departmental Personnel File is excepted from disclosure pursuant to section 552.101 in conjunction with section 143.089(g) of the Local Government Code. Section 143.089 contemplates two different types of personnel files, one that the police department is required to maintain as part of the police officer's civil service file, and one that the police department may maintain for its own internal use. *See* Local Gov't Code § 143.089(a), (g). The civil service file must contain certain specified items, including documents relating to any misconduct in those cases where the police department took disciplinary action against the peace officer. *See id.* § 143.089(a)(2). However, documents

¹ It is implicit in several provisions of the Public Information Act (the "Act") that the Act applies only to information already in existence. *See* Gov't Code §§ 552.002, .021, .227, .351.

relating to any alleged misconduct or disciplinary action taken must be removed from the civil service file if the police department determines that there is insufficient evidence to sustain the charge of misconduct or that the disciplinary action was taken without just cause. *See id.* § 143.089(b), (c). Thus, subsections (a)-(c) limit the contents of the civil service file. Subsection (g) authorizes, but does not require, the city police department to maintain for its use a separate and independent, internal personnel file on a peace officer. Section 143.089(g) provides:

A fire or police department may maintain a personnel file on a fire fighter or police officer employed by the department for the department's use, but the department may not release any information contained in the department file to any agency or person requesting information relating to a fire fighter or police officer. The department shall refer to the director or the director's designee a person or agency that requests information that is maintained in the fire fighter's or police officer's personnel file.

Local Gov't Code § 143.089(g). In *City of San Antonio v. Texas Attorney General*, 851 S.W.2d 946 (Tex. App.--Austin 1993, writ denied), the court addressed a request for information contained in a police officer's personnel file maintained by the city police department for its use and addressed the applicability of section 143.089(g) to that file. The records included in the personnel file related to complaints against the police officer for which no disciplinary action was taken. The court determined that section 143.089(g) made these records confidential. *See City of San Antonio*, 851 S.W.2d at 949.

You inform us that the city maintains three files which include a civil service commission file, as required by section 143.089(a) of the Local Government Code, a departmental personnel file maintained by the police department, as permitted by section 143.089(g) of the Local Government Code, and a Human Resources Personnel File maintained by the city's Human Resources department. You also inform us that all personnel orders, memos, department correspondence, internal affairs folders, departmental folders, supervisor's folders, evaluations, and training records pertaining to the specified police officer that are not included in the Human Resources Personnel File are maintained in the Departmental Personnel File. We believe that this practice is contrary to the purpose and legislative intent of section 143.089 of the Local Government Code. Section 143.089 contemplates the existence of only two personnel files concerning a particular police officer. Documents relating to commendations, periodic evaluations by the officer's supervisor, and misconduct that resulted in disciplinary action against the officer must be placed in the civil service file and are subject to disclosure under chapter 552 of the Government Code. *See Local Gov't Code* § 143.089(a)(1)-(2). Other personnel records, including documents that relate to unsustained allegations of misconduct or disciplinary action taken without just cause, must be kept in the police department's confidential section 143.089(g) file. The maintenance of the Human Resources Personnel File, the contents of which are subject to disclosure under chapter 552 of the Government Code, is contrary to the city's election to be governed by

chapter 143 of the Local Government Code and to the legislative purpose of section 143.089. *See City of San Antonio v. San Antonio Express-News*, ___ S.W.3d ___, 2000 WL 1918877 (Tex. App. – San Antonio 2000, no pet. h.) (restricting confidentiality under section 143.089(g) to “information reasonably related to a police officer’s or fire fighter’s employment relationship”); *see also* Attorney General Opinion JC-0257 at 6-7 (2000) (addressing functions of section 143.089(a) and (g) files).

You state that the City of Baytown has adopted civil service for its police officers and fire fighters pursuant to Chapter 143 of the Local Government Code and that you forwarded the request for information to the city’s Civil Service Director upon receipt of the request. You also state that the submitted Departmental Personnel File is maintained pursuant to section 143.089(g). Therefore, we conclude that the submitted Departmental Personnel File is confidential and excepted from disclosure pursuant to section 552.101 in conjunction with section 143.089(g) of the Local Government Code. Because the submitted Human Resources Personnel File is not maintained as the civil service file, it must be included as part of the Departmental Personnel File. Accordingly, we also conclude that the submitted Human Resources Personnel File is excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body’s intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general’s Open Government Hotline, toll free, at 877/673-6839.

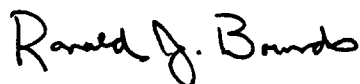
The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Ronald J. Bounds
Assistant Attorney General
Open Records Division

RJB/seg

Ref: ID# 150159

Enc. Submitted documents

cc: Mr. Jed Silverman
801 Congress, Suite 200
Houston, Texas 77002
(w/o enclosures)